IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5365 OF 2005

Amar Vijay Kute ...Applicant
Vs.
The State of Maharashtra ...Respondent

Ms Pranali Kakade for the Applicant.
Ms S. D. Shinde, A.P.P.for the Respondent.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 16, 2005.

P.C.:

1. Heard the Advocate appearing for the Applicant and the learned A.P.P. for the State.

2. The offences alleged against the Applicant and the co-accused are under section 307, 326, 324 read with section 34 of the Indian Penal Code. The ground on which bail is claimed is parity on the basis of the order passed by the Sessions Court in favour of the co-accused. The bail is also claimed on merits. It is submitted that there is no difference between the role played by the co-accused who are enlarged on bail and the Appllicant. It is submitted that witnesses have named the two other co-accused and therefore, merely because names of the co-accused are not disclosed in the F.I.R., that does not make case of the co-accused different. The learned Advocate further submitted that the F.I.R. alleges that the Applicant has used a sword as weapon of assault and what is allegedly recovered at the instance of the

Applicant is a knife. Lastly, it is submitted that the Applicant is in custody for last more than one year and therefore, in view of the decision of the Apex Court in 2001(3) Crimes Page 410 (Supreme Court), the Applicant deserves to be enlarged on bail. The learned A.P.P. has brought to my notice the material which was collected during course of investigation.

3. I have considered the submissions. While considering the Application for bail, facts which are peculiar to the Applicant are to be considered. There are several aspects which needs consideration such as manner in which the offence has been committed, the weapon used in the offence and in general the fact situation of the case. Considering the fact situation of the case before the Apex Court, the said decision cannot be read as a ratio that in a case where alleged offence is under section 307 of the Indian Penal Code, the accused is entitled for bail on the ground that victim has survived and there is no possibility of offence being accelerated into a higher offence. A ratio of a decision depends on what is actually decided. In the present case, the witnesses are consistent about the role played by the Applicant in assault. The injury certificate shows number of injuries on the head of the victim. Though in the F.I.R. the weapon in the hands of the Applicant is

described as a sword, the injured person has described weapon as a long knife and infact the recovery panchnama records that what is recovered is a sword like long knife at the instance of the Applicant.

4. The name of the Applicant appears in the F.I.R. Apart from this, the role played by the Applicant is completely different from the role played by the co-accused who are ordered to be enlarged on bail.

5. As the Applicant is in custody for last more than one year, the trial deserves to be expediated.

6. Hence, I pass the following order:

: O R D E R :

i) Application is rejected. If there is a Fast Track Court available which is empowered to try the case, the Sessions Court will entrust the case to a Fast Tract Court. The Trial Judge will treat the case as High Court expediated case.

ii) The learned Trial Judge will endeavour to conclude the trial within a period of six months.

JUDGE